

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 24

FUNDACION MANUEL DE LA PILA IGLESIAS,
INC. DBA HOSPITAL DR. PILA, INC.

Employer

and

Case: 24-UC-240

SINDICATO INDEPENDIENTE DE CLINICAS
Y HOSPITALES DEL SUR

Petitioner

DECISION AND ORDER DISMISSING PETITION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, an investigation was conducted under the direction of the Regional Director for Region 24 of the National Labor Relations Board, hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the investigation, the undersigned makes the following findings and conclusions:

I. ISSUES

The Petitioner seeks to clarify an existing unit of technical and professional employees employed at the Employer's facility in Ponce, PR, by including the classifications of MRI Technician, CT Scan Technician, Sonography and Nuclear Medicine Technician into the existing bargaining unit. The Employer, however, requests the dismissal of the petition on the following grounds: (1) the classifications of CT Scan Technician, Sonography and Nuclear Medicine Technician have been historically excluded from the unit and have not undergone substantial changes since their creation; (2) the duties of the MRI Technician are performed by the CT Scan

Technician, who should be excluded from the unit in any event because his position is that of Clinical Supervisor CT-MRI and is a supervisory position; (3) the accretion of classifications into the bargaining unit midway through the life of the contract is disruptive of the existing bargaining relationship.

II. DECISION

For the reasons discussed below the petition to clarify the unit is denied. In this regard, the investigation disclosed that except for the MRI Technician, the classifications sought to be included, the CT Scan Technician, Sonography and Nuclear Medicine Technician, have been historically excluded from the unit. With regards to the MRI Technician classification, the investigation failed to disclose that the recent assignment of MRI duties to the CT Scan Technician, a historically excluded classification, has substantially changed the classification such as to require its inclusion in the unit.

III. STATEMENT OF FACTS

The Employer, a health care facility in Ponce, Puerto Rico, employs Diet and Cafeteria Department, Housekeeping and Technical and Professional employees that have been represented by the Petitioner since 2003. At issue is the unit pertaining to the Technical and Professional employees. There are approximately 78 employees in the unit. There are seven employees in the classifications the Petitioner seeks to include.

The extant collective bargaining agreement covering the unit employees herein expires by its terms on August 31, 2007. The same was negotiated during the period from March 10, 2004 to September 1, 2004. Prior to this agreement, the unit was represented by, and there had been collective bargaining agreements with, another labor organization, Sindicato Puertorriqueño de Trabajadores (SPT). SPT currently represents the maintenance, clerical, and licensed practical nurses units at the Employer's facility in Ponce. Another labor organization, ULEES, represents the registered nurses.

The investigation revealed that the sought classifications of CT Scan Technician and Sonographer have been in existence for approximately 10 years. The classification of Nuclear Medicine Technician has been in existence for approximately three years, and the classification of MRI Technician was created during the past year.

The Petitioner contends that during bargaining negotiations held between March and September 2004, it requested the inclusion of the Sonography and CT Scan Technician classifications in the unit, but did not request the classification of Nuclear Medicine Technician.¹ On September 1, 2004, the parties signed the extant collective

¹The Petitioner did not submit evidence to show that it reserved the right to pursue a unit clarification after the signing of the contract. In this regard, the investigation disclosed that in February 2005, the Petitioner filed a grievance before the Commonwealth of Puerto Rico's Labor Department seeking to clarify the unit

bargaining agreement setting forth a description of the unit which makes no reference to the positions at issue herein. The MRI Technician classification came into existence some time after the signing of the contract. In March 2006, the Petitioner filed the instant Petition. This Petition was amended on May 25, 2006.²

1. The CT Scan and MRI Technician Positions

The CT Scan classification has been in existence for 10 years, approximately. The Employer presently employs one individual in this classification who for the past year has also performed the duties relevant to the operation of the MRI.³ The Employer contends that this individual holds the position of "Clinical Supervisor CT-MRI." The Employer submits that the "Clinical Supervisor CT-MRI" is a supervisory position. According to the Employer, its duties include participating in job evaluations, drafting work programs, training, and hiring the radiology clinical technicians, among other duties. Other than requesting its inclusion in the unit during bargaining negotiations, the Petitioner has not provided a basis for its petition.

2. The Sonography Position

The Sonography classification has been in existence for the past 10 years, approximately. There are two individuals currently employed as Sonographers. The Petitioner is seeking to represent the employees in this classification on the basis that it requested its inclusion in the most recent bargaining negotiations. The Employer takes the position that the Sonography classification was in existence prior to the signing of the contract and has been historically excluded from the bargaining unit.

3. The Nuclear Medicine Technician Position

The Nuclear Medicine Technician classification has been in existence for three years, approximately. At the present time, there are two Nuclear Medicine Technicians in the Employer's employ. In this regard, the Employer contends that this classification has been in existence since the time when the Petitioner was certified in 2003. The Petitioner, on the other hand, admits that it did not request the inclusion of this classification in the bargaining unit during negotiations.

IV. DISCUSSION

A. The Petition Is Untimely

The Board generally declines to clarify a bargaining unit in midterm of an existing collective bargaining agreement when the objective is to change the composition of a

at issue herein. In February 2006, the Petitioner requested the closing of the case without prejudice.

²The amendment excluded two classifications initially sought: the ORYX Coordinator and Medicare Coordinator.

³There is no dispute that there is only one individual in this classification and that he performs both CT Scan and MRI duties.

contractually agreed upon unit by the exclusion or inclusion of employees. To do otherwise, the Board has held, would be unnecessarily disruptive of an established bargaining relationship. Wallace-Murray Corp., 192 NLRB 1090 (1971), San Jose Mercury & San Jose News, 200 NLRB 105 (1972). In this case, the Sonography and the CT Scan Technician classifications have been in existence for approximately 10 years and historically excluded from the bargaining unit. The Nuclear Medicine Technician classification was in existence at the time the Petitioner was certified on September 19, 2003. On September 1, 2004, the parties agreed to a collective bargaining agreement containing a contractual unit that did not include these classifications. This agreement was negotiated between March and September 2004. A year and a half after the agreement was signed, the Petitioner sought to include these positions with the filing of the instant unit clarification petition. Meanwhile, the duties of the MRI Technician were assigned to the CT Scan Technician. The Petitioner, however, has not shown that the assignment of these added MRI duties have substantially changed the duties of the CT Scan Technician, an already historically excluded classification, for its inclusion in the bargaining unit. Bethlehem Steel Corp., 329 NLRB 243, 244 (1999). Absent recent substantial changes, the Board will not entertain such petition, regardless of when in the bargaining cycle the petition is filed. Premcor, Inc., 333 NLRB 1365 (2001). In view of the above, it is unnecessary to address the supervisory status of this classification. Accordingly, I find that the Petitioner's request to amend the unit in midterm of the collective bargaining agreement by including the Sonography Technician, the CT Scan Technician and MRI Technician, and the Nuclear Medicine Technician classifications in the bargaining unit is untimely.

B. The Classifications Have Been Historically Excluded from The Unit

The Board has held that classifications are "historically excluded" from a unit when they were created before the parties entered into a collective bargaining agreement and the union did not request their inclusion in the unit at the time the parties were negotiating that agreement. See SunarHauserman, 273 NLRB 1176, 1177 (1984). The same rule applies where the disputed jobs were in existence at the time of the certification, the employees occupying those jobs had no opportunity to participate in the selection of the bargaining representative, and there are no recent changes in the jobs that would make them appropriate for inclusion. See Williams Transportation Co., 233 NLRB 837 (1977); Kaiser Foundation Hospitals, 337 NLRB 1061 (2002). In this case, the subject classifications have been historically excluded from the bargaining unit represented by the Petitioner and by its Predecessor, and the Petitioner has not shown that any one of these classification has undergone recent substantial changes that would make it appropriate for its inclusion in the bargaining unit. As noted above, the Petitioner, has not shown that the assignment of the added MRI duties has substantially changed the duties of the CT Scan Technician, an already historically excluded classification. Accordingly, I find that the Sonography Technician, the CT Scan Technician and MRI Technician, and the Nuclear Medicine Technician classifications have been historically outside the unit and therefore, that the Petitioner's request to amend the unit by including these classifications in the bargaining unit should be denied.

VI. ORDER

Based upon the above findings of fact and conclusions of law, IT IS HEREBY ORDERED that Petitioner's request to clarify the unit by adding to it the classifications of CT Scan Technician, MRI Technician, Sonography Technician and Nuclear Medicine Technician be denied.

Accordingly, the unit clarification petition herein is dismissed.

VII. RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, NW, Washington, D.C. 20570. This request must be received by the Board in Washington by **June 20, 2006**.

Dated at San Juan, Puerto Rico, this 6th day of June 2006.

/s/

Efraín Rivera-Vega
Acting Regional Director
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